

REMARKS

The last Office Action has been carefully considered.

It is noted that claim 25 is rejected under 35 U.S.C. 103(a) over the patent to Heath in view of the patent to Crisci.

Claim 26 is rejected under 35 U.S.C. 103(a) as above, and further in view of the patent to Mygatt.

The claims are also rejected under 35 U.S.C. 112.

Also, the drawings are objected to.

In connection with the Examiner's objection to the drawings, applicant has numbered the additional figures as Figures 2a and Figure 4a as required by the Examiner. Also, a hatching has been provided for the plastic cap of the device of the present invention. It is therefore believed that the Examiner's grounds for the formal objections and rejections are therefore eliminated.

In connection with the Examiner's objection of the claims over the art, applicant has canceled the original claims and submitted claims 27 and 28.

It is respectfully submitted that these claims clearly and patentably distinguish the present invention from the prior art applied by the Examiner.

The present invention relates to a lid applied by pressure to cans containing drinks. The references applied by the Examiner as well as innumerable patents in the prior art define an original arrangement of annular sealing ribs, to produce special effects. Where it is impossible to protect such an original arrangement, the constructions proposed in the references do not provide any solutions.

The patent to Crisci applied by the Examiner discloses a device with four annular sealing ribs 19, 20, placed on the top of a lid 15 only, which lid can be torn off.

The patent to Bartsch discloses only one annular sealing rib 28 placed on the top of a lid 10 removed by a tearing off.

In the device in accordance with the present invention not only the presence of annular sealing rings is proposed, but rather their original position for producing specific effects. There are two annular seal rings 48, 49, and they are respectively placed in the beginning and at the end of the truncated cone-shaped body 33 on the lid 30, so that they match at the beginning and at the end of the truncated cone-shaped top 12 of the cylindrical body 11 of the can 10.

The effect produced by the first rib 48 is to prevent accidental loss of unconsumed beverage 28, therefore acting from outside inwards. The effect produced by the second rib 49 is to prevent pollution of unconsumed beverage, therefore acting from inside outwards.

At the beginning and end of the truncated cone-shaped body 33, two annular ribs 48, 49 are therefore presented to make a seal, and the ribs match with the beginning and end of the truncated cone-shaped mouth 12 of the can 10.

The second characteristic of the device in accordance with the present invention is not the presence of an upward-facing handle 40. Upward-facing handles are well known in the art. The second characteristic

of the device of the present invention is a special handle 40. About half way up the handle 40, there are two lateral notches 43 and a transversal dimension such that by making a slight longitudinal bend, it is able to enter the aperture 23 in the can 10, after all the drink 28 has been consumed, becoming inserted in the notches 43 in the edges of the aperture 23 thus fixing the can 10 and the lid 30 together, and preventing their coming apart and the lid 40 forming an item of waste to pollute the environment.

The new features of the present invention which are defined in claims 27 and 28 are not disclosed in the references. In order to arrive at the applicant's invention from the teachings of the references, the references have to be fundamentally modified. In particular, the constructions therefore disclosed in the references have to be modified by including into them the features which were first proposed by the application. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in *re Randol and Redford* (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the references do not contain any hint or suggestion for such modifications.

As explained herein above, the present invention provides for the highly advantageous results which can not be accomplished by the constructions disclosed in the references. It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushima and Takahashi* (174 USPQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

In view of the above presented remarks and amendments, it is believed that claims 27 and 28 should be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Striker', with a long horizontal flourish extending to the right.

Michael J. Striker
Attorney for Applicants
Reg. No. 27233

O.I.P.E. JCAZ
SEP 24 2003
PATENT & TRADEMARK OFFICE

approved

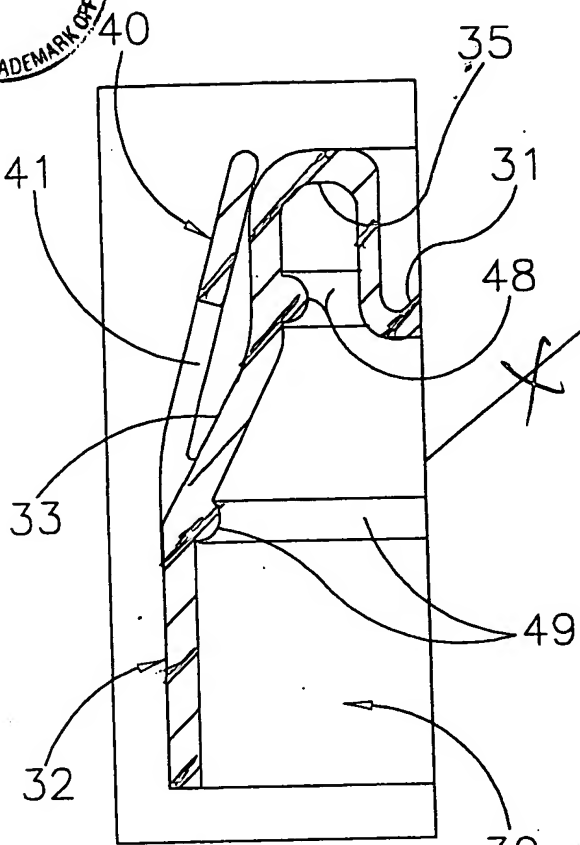


Fig. 2a

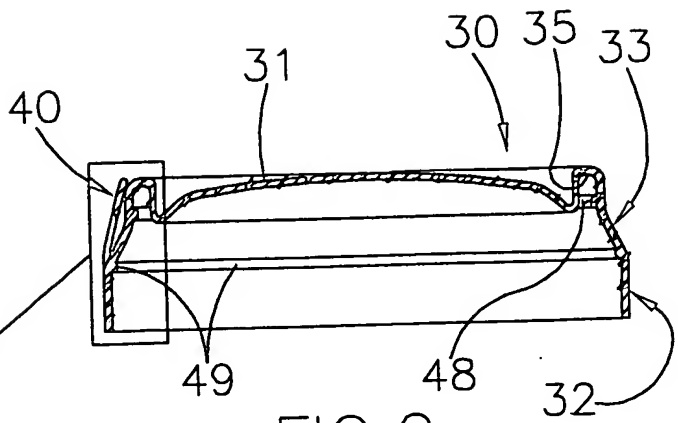


FIG. 2

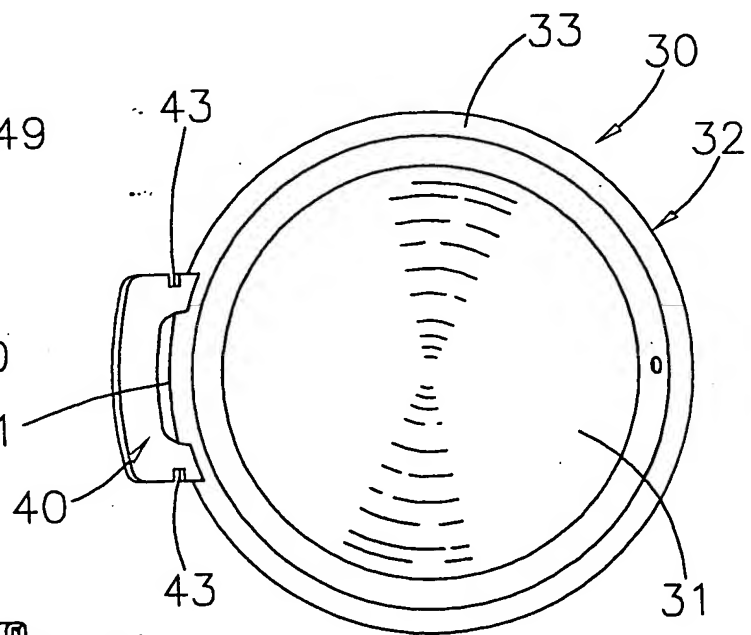


FIG. 3

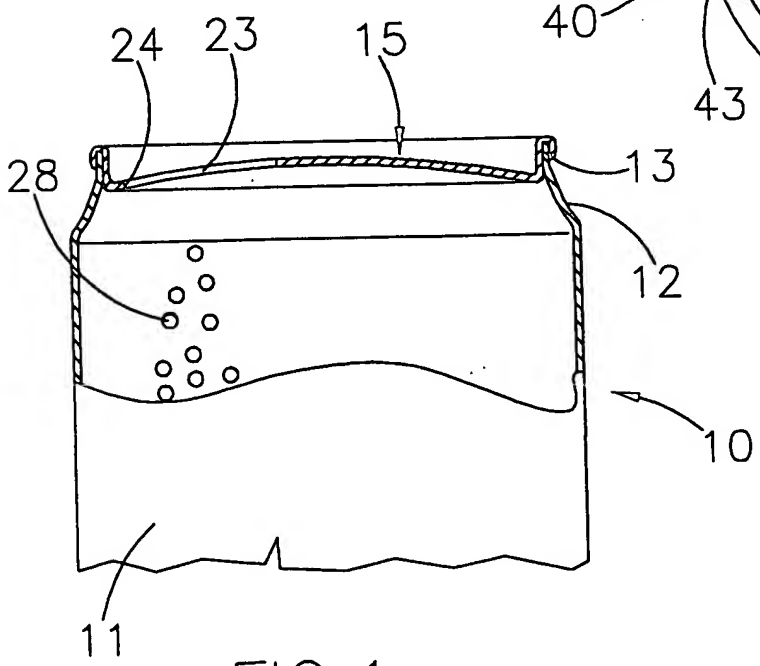


FIG. 1

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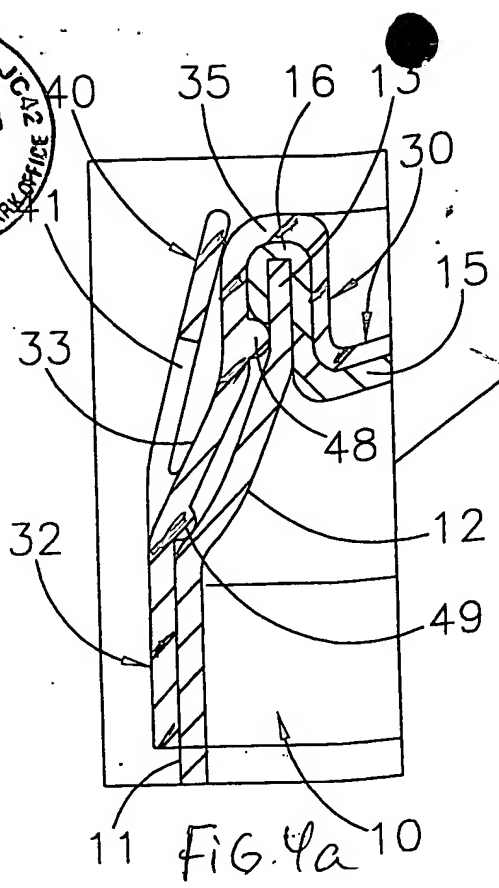


FIG. 4a

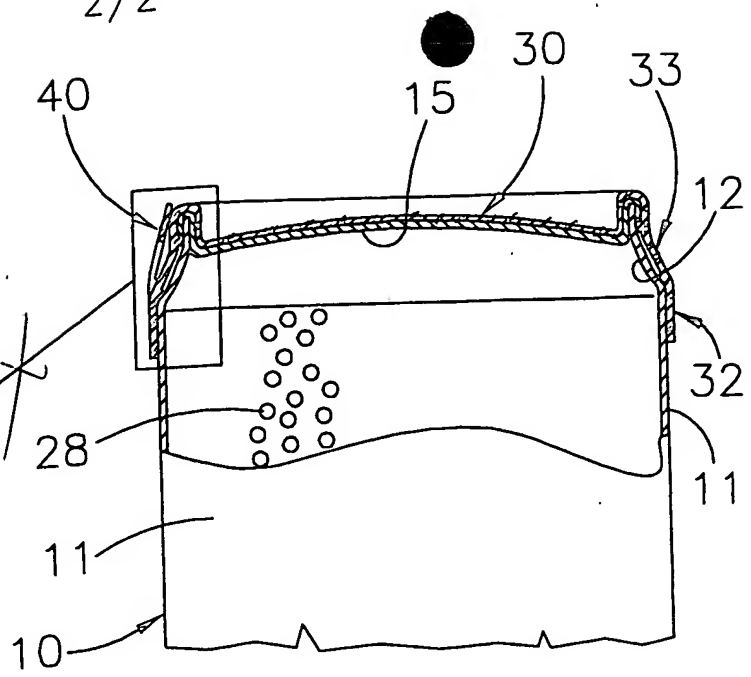


FIG. 4

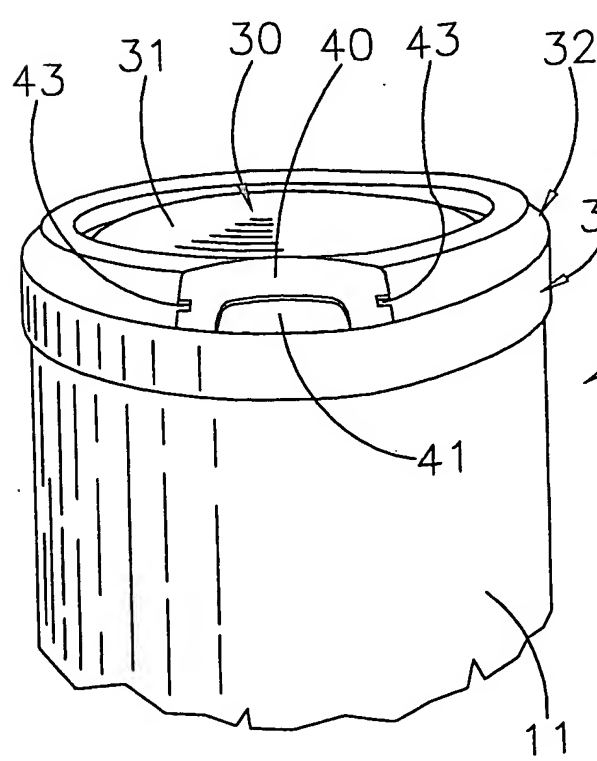


FIG. 5

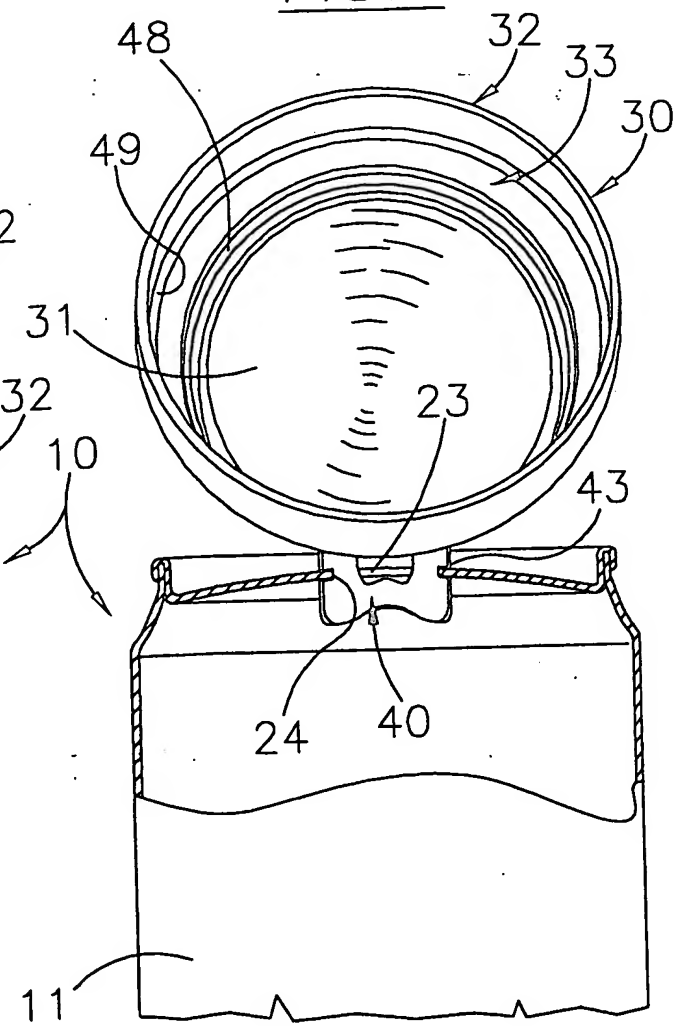


FIG. 6